

AN ACT

RELATING TO MOTOR VEHICLES; AUTHORIZING INTERGOVERNMENTAL AGREEMENTS FOR EXCHANGE OF MOTOR VEHICLE OFFENSE INFORMATION BETWEEN TRIBES AND THE STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-1-4.6 NMSA 1978 (being Laws 1990, Chapter 120, Section 7, as amended) is amended to read:

"66-1-4.6. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry;

B. "financial responsibility" means the ability to respond in damages for liability resulting from traffic accidents arising out of the ownership, maintenance or use of a motor vehicle of a type subject to registration under the laws of New Mexico, in amounts not less than specified in the Mandatory Financial Responsibility Act or having in effect a motor vehicle insurance policy. "Financial responsibility" includes a motor vehicle insurance policy, a surety bond or evidence of a sufficient cash deposit with the state treasurer;

C. "first offender" means a person who for the first time under state or federal law or a municipal ordinance or a tribal law has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any other drug that renders the person incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred;

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D. "flammable liquid" means any liquid that has a flash point of seventy degrees fahrenheit or less, as determined by a tagliabue or equivalent closed-cup test device;

E. "foreign jurisdiction" means any jurisdiction other than a state of the United States or the District of Columbia;

F. "foreign vehicle" means every vehicle of a type required to be registered under the provisions of the Motor Vehicle Code brought into this state from another state, territory or country; and

G. "freight trailer" means any trailer, semitrailer or pole trailer drawn by a truck tractor or road tractor, and any trailer, semitrailer or pole trailer drawn by a truck that has a gross vehicle weight of more than twenty-six thousand pounds, but "freight trailer" does not include manufactured homes, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight."

Section 2. Section 66-1-4.16 NMSA 1978 (being Laws 1990, Chapter 120, Section 17, as amended) is amended to read:

"66-1-4.16. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they are cracked and broken;

B. "safety zone" means the area or space officially set apart within a highway for the exclusive use of pedestrians and which is protected or is so marked or

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indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone;

C. "school bus" means any motor vehicle operating under the authority of the state board of education or private school or parochial school interests that is used to transport children, students or teachers to and from schools or to and from any school activity, but not including any vehicle:

(1) operated by a common carrier, subject to and meeting all requirements of the public regulation commission but not used exclusively for the transportation of pupils;

(2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the public regulation commission but is not used exclusively for the transportation of pupils; or

(3) operated as a per capita feeder as defined in Section 22-16-6 NMSA 1978;

D. "seal" means the official seal of the taxation and revenue department as designated by the secretary;

E. "secretary" means the secretary of taxation and revenue, and, except for the purposes of Sections 66-2-3 and 66-2-12 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;

F. "semitrailer" means any vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some significant part of its weight and that of its load rests upon or is carried by another vehicle;

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G. "sidewalk" means that portion of street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians;

H. "slow-moving vehicle" means any vehicle that is ordinarily moved, operated or driven at a speed less than twenty-five miles per hour;

I. "solid tire" means every tire of rubber or other resilient material that does not depend upon compressed air for the support of the load;

J. "special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including but not limited to farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers;

K. "specially-constructed vehicle" means every vehicle of a type required to be registered under the Motor Vehicle Code not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction;

L. "state" means any state, territory or possession of the United States, the District of Columbia or any province of the Dominion of Canada;

M. "state highway" means any public highway that has been designated as a state highway by the legislature, the state transportation commission or the secretary of highway and transportation;

N. "stop", when required, means complete cessation from movement;

O. "stop, stopping or standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid

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conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal;

P. "street" or "highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

Q. "subsequent offender" means a person who was previously a first offender and who again, under state law, federal law or a municipal ordinance or a tribal law, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug which rendered him incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred; and

R. "suspension" means that a person's driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn."

Section 3. Section 66-1-4.17 NMSA 1978 (being Laws 1990, Chapter 120, Section 18, as amended) is amended to read:

"66-1-4.17. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "tank vehicle" means a motor vehicle that is designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis and that has either a gross vehicle weight rating of twenty-six thousand one or more pounds or is used in the transportation of hazardous materials requiring placarding of the vehicle under applicable law;

B. "taxicab" means a motor vehicle used for hire in the transportation of persons, having a normal seating capacity of not more than seven persons;

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C. "through highway" means every highway or portion thereof at the entrance to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing it when stop signs are erected as provided in the Motor Vehicle Code;

D. "title service company" means a person, other than the department, an agent of the department, a licensed dealer or the motor transportation division of the department of public safety, who for consideration issues temporary registration plates or prepares and submits to the department on behalf of others applications for registration of or title to motor vehicles;

E. "traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together using any highway for purposes of travel;

F. "traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed;

G. "traffic safety bureau" means the traffic safety bureau of the state highway and transportation department;

H. "trailer" means any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no significant part of its weight rests upon the towing vehicle;

I. "transporter of manufactured homes" means a commercial motor vehicle operation engaged in the business of transporting manufactured homes from the manufacturer's location to the first dealer's location. A "transporter of manufactured homes" may or may not be associated with or affiliated with a particular manufacturer or dealer;

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J. "travel trailer" means a trailer with a camping body and includes recreational travel trailers and camping trailers;

K. "trial court" means the magistrate, municipal or district court that tries the case concerning an alleged violation of a provision of the Motor Vehicle Code;

L. "tribal court" means a court created by a tribe or a court of Indian offense created by the United States secretary of the interior;

M. "tribe" means an Indian nation, tribe or pueblo located wholly or partially in New Mexico;

N. "truck" means every motor vehicle designed, used or maintained primarily for the transportation of property;

O. "truck camper" means a camping body designed to be loaded onto, or affixed to, the bed or chassis of a truck. A camping body, when combined with a truck or truck cab and chassis, even though not attached permanently, becomes a part of the motor vehicle, and together they are a recreational unit to be known as a "truck camper"; there are three general types of truck campers:

(1) "slide-in camper" means a camping body designed to be loaded onto and unloaded from the bed of a pickup truck;

(2) "chassis-mount camper" means a camping body designed to be affixed to a truck cab and chassis; and

(3) "pickup cover" or "camper shell" means a camping body designed to provide an all-weather protective enclosure over the bed of a pickup truck and to be affixed thereto; and

P. "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other

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than a part of the weight of the vehicle and load so drawn."

Section 4. A new section of the Motor Vehicle Code, Section 66-5-1.2 NMSA 1978, is enacted to read:

"66-5-1.2. DEFINITION--TRIBE.--As used in Sections 66-5-25, 66-5-26, 66-5-30 and 66-8-102 NMSA 1978, "tribe" means an Indian nation, tribe or pueblo that is located wholly or partially in New Mexico and that has executed an intergovernmental agreement with the state pursuant to Section 66-5-27.1 NMSA 1978."

Section 5. Section 66-5-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 245, as amended) is amended to read:

"66-5-23. RECORDS TO BE KEPT BY THE DIVISION.--

A. The division shall file every application for a driver's license or a commercial driver's license pursuant to the provisions of the New Mexico Commercial Driver's License Act received by it and shall maintain suitable indexes containing:

(1) all applications denied and, on each, note the reasons for denial;

(2) all applications granted;

(3) the name of every licensee whose license has been suspended or revoked by the division and, after each, note the reasons for the action; and

(4) the name of every licensee who has violated his written promise to appear in court.

B. The division shall also file all abstracts of court records of conviction or reports that it receives from the trial courts of this state or from a tribal court, which

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show either that a driver is a first offender or a subsequent offender and whether that offender was represented by counsel or waived the right to counsel, with attention to Article III of the Driver License Compact, and in connection therewith maintain convenient records or make suitable notations in order that the individual record of each licensee showing the convictions of the licensee in which he has been involved shall be readily ascertainable and available for the consideration of the division upon any application for renewal of license and at other suitable times."

Section 6. Section 66-5-25 NMSA 1978 (being Laws 1978, Chapter 35, Section 247, as amended) is amended to read:

"66-5-25. SUSPENDING PRIVILEGES OF NONRESIDENTS--REPORTING CONVICTIONS--FAILURES TO APPEAR--FAILURES TO PAY.--

A. The privilege of driving a motor vehicle on the highways of this state given to a nonresident shall be subject to suspension or revocation by the division in like manner and for like cause as a driver's license may be suspended or revoked.

B. The division is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, or of notice of failure to appear or upon determination by the division of failure to pay a penalty assessment, to forward the record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

C. Upon a request by a tribe, the division is authorized to forward to a tribal court or other authority, as specified in an applicable intergovernmental agreement, the record of the conviction in this state of a resident driver of a motor vehicle, who is subject to the jurisdiction of the tribe, of any offense under the Motor

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Vehicle Code or of notice of failure to appear or upon determination by the division of a failure to pay a penalty assessment."

Section 7. Section 66-5-26 NMSA 1978 (being Laws 1978, Chapter 35, Section 248, as amended) is amended to read:

"66-5-26. SUSPENDING RESIDENT'S LICENSE--CONVICTION FAILURE TO APPEAR, FAILURE TO PAY IN ANOTHER STATE OR TRIBAL JURISDICTION.--

A. The division is authorized to suspend or revoke the license of a resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state or by a tribe of an offense that if committed within the jurisdiction of this state, would be grounds for the suspension or revocation of the license of a driver.

B. In addition, the division is authorized to suspend the license of a resident of this state, or the privilege of a nonresident to drive a motor vehicle in this state, upon receiving notice of failure to appear or pay a penalty assessment imposed by a tribe or imposed in another state that is a signatory of the Nonresident Violator Compact with New Mexico."

Section 8. A new section of the Motor Vehicle Code, Section 66-5-27.1 NMSA 1978, is enacted to read:

"66-5-27.1. RECOGNITION OF CONVICTIONS FOR MOTOR VEHICLE OFFENSES COMMITTED ON TRIBAL LAND--INTERGOVERNMENTAL AGREEMENTS--INFORMATION SHARING WITH TRIBAL COURTS.--

A. The department is authorized to enter into an intergovernmental agreement with the appropriate governmental entity of a tribe to permit the exchange of information between the tribal court and the division regarding persons who are

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adjudicated for a motor vehicle offense that occurred within the jurisdiction of the tribal court.

B. The division is authorized to suspend or revoke the driver's license or driving privilege of a person who has been convicted of a motor vehicle offense by a tribal court; provided that:

(1) the department has entered into an intergovernmental agreement with the tribe that permits the exchange of information on motor vehicle offense convictions between the tribal court and the division; and

(2) the division has received notice from the tribal court, or other authority as provided in the intergovernmental agreement, that the driver has been convicted of a motor vehicle offense that, if committed within the jurisdiction of the state, would be grounds for suspension or revocation of the driver's license or driving privilege of the offender."

Section 9. Section 66-5-30 NMSA 1978 (being Laws 1978, Chapter 35, Section 252, as amended) is amended to read:

"66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE LICENSE.--

A. The division is authorized to suspend the instruction permit, driver's license or provisional license of a driver without preliminary hearing upon a showing by its records or other sufficient evidence, including information provided to the state pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978, that the licensee:

(1) has been convicted of an offense for which mandatory revocation of license is required upon conviction;

(2) has been convicted as a driver in an accident resulting in

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the death or personal injury of another or serious property damage;

(3) has been convicted with such frequency of offenses against traffic laws or rules governing motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(4) is an habitually reckless or negligent driver of a motor vehicle;

(5) is incompetent to drive a motor vehicle;

(6) has permitted an unlawful or fraudulent use of the license;

(7) has been convicted of an offense in another state or tribal jurisdiction that if committed within this state's jurisdiction would be grounds for suspension or revocation of the license;

(8) has violated provisions stipulated by a district court in limitation of certain driving privileges;

(9) has failed to fulfill a signed promise to appear or notice to appear in court as evidenced by notice from a state court or tribal court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code or pursuant to the laws of the tribe;

(10) has failed to pay a penalty assessment within thirty days of the date of issuance by the state or a tribe; or

(11) has accumulated seven points, but less than eleven points, and when the division has received a recommendation from a municipal or magistrate judge that the license be suspended for a period not to exceed three months.

B. Upon suspending the license of a person as authorized in this

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section, the division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within not to exceed twenty days, not counting Saturdays, Sundays and legal holidays, after receipt of the request in the county wherein the licensee resides unless the division and the licensee agree that the hearing may be held in some other county; provided that the hearing request is received within twenty days from the date that the suspension was deposited in the United States mail. The director may, in his discretion, extend the twenty-day period. Upon the hearing, the director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon the hearing, the division shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of the license or revoke the license."

Section 10. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for a person who has an alcohol concentration of eight

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one hundredths or more in his blood or breath to drive a vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while driving a vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender may be sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars (\$300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection H of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other

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rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars (\$1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, an offender shall be sentenced

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to a jail term of not less than seventy-two consecutive hours, forty-eight hours of community service and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days and a fine of seven hundred fifty dollars (\$750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth or subsequent conviction pursuant to this section, an offender is guilty of a fourth degree felony, as provided in Section 31-18-15 NMSA 1978, and shall be sentenced to a jail term of not less than six months, which shall not be suspended or deferred or taken under advisement.

H. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol

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or drug abuse screening program and, if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

I. Upon a first conviction for aggravated driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection D of this section, as a condition of probation, an offender shall be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

J. Upon a first conviction for driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection A, B or C of this section, as a condition of probation, an offender may be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

K. Upon any subsequent conviction pursuant to this section, as a

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condition of probation, a subsequent offender shall be required to have an ignition interlock device installed and operating for a period of at least one year on all motor vehicles driven by the subsequent offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the subsequent offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If a subsequent offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the subsequent offender may be in violation of the terms and conditions of his probation.

L. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

M. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe, where that ordinance or law is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

N. In addition to any other fine or fee that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

O. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary

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disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body; and

(2) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, ~~2003~~ 2003 278